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TRANSCRIPT OF PROCEEDINGS APRIL 7, 2014

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FAIR EMPLOYMENT AND HOUSING COUNCIL
MEETING AND HEARING

UNIVERSITY OF CALIFORNIA, IRVINE, SCHOOL OF LAW
401 East Peltason Drive, EDU 1121
Irvine, California 92697

APRIL 7, 2014

- - -

TRANSCRIPT OF PROCEEDINGS
PUBLIC HEARING: ADOPTED PROPOSED
DRAFT AMENDMENTS TO THE CALIFORNIA
FAMILY RIGHTS ACT REGULATIONS

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REPORTED BY: LELIA C. HASUIKE, CSR NO. 11082
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TRANSCRIPT OF PROCEEDINGS APRIL 7, 2014

<p>1 2 FAIR EMPLOYMENT AND HOUSING COUNCIL 3 MEETING AND HEARING 4 5 UNIVERSITY OF CALIFORNIA, IRVINE, SCHOOL OF LAW 6 401 East Peltason Drive, EDU 1121 7 Irvine, California 92697 8 APRIL 7, 2014 9 --- 10 11 12 13 14 15 TRANSCRIPT OF PROCEEDINGS, taken at 401 East 16 Peltason Drive, EDU 1121, Irvine, California, commencing 17 at 10:26 a.m., Monday, April 7, 2014, before Lelia C. 18 Hasuike, CSR No. 11082. 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 2</p>	<p>1 IRVINE, CALIFORNIA; MONDAY, APRIL 7, 2014; 2 10:26 A.M. 3 --- 4 5 CHAIRPERSON MANDELBAUM: Thank you, 6 Ms. Billotti. 7 So without further ado, we'll move from our 8 regular meeting portion into the formal notice and 9 comment hearing portion of the meeting. And I 10 understand that we have a court reporter today and we'll 11 be transcribing this meeting. 12 So moving into that section, we are -- we are 13 on the record. The time is approximately 10:27 a.m., on 14 Monday, April 7th. We are here in room EDU1121, the 15 moot courtroom of the University of California, Irvine, 16 School of Law, located at 401 East Peltason Drive 17 Irvine, California. 18 My name is Chaya Mandelbaum. I'm the 19 chairperson of the Fair Employment and Housing Council, 20 and joining me today are members of the Fair 21 Employment and Housing Council, Councilmembers 22 Dale Brodsky, Patricia Perez, and Andrew Schneiderman. 23 Ex Officio member and director of the department, 24 Phyllis Cheng, will be joining us later today. 25 Even though we have made initial</p> <p style="text-align: right;">Page 4</p>
<p>1 A P P E A R A N C E S: 2 COUNCILMEMBERS PRESENT: 3 CHAYA MANDELBAUM, CHAIRPERSON 4 DALE BRODSKY, COUNCILMEMBER 5 PATRICIA PEREZ, COUNCILMEMBER 6 ANDREW SCHNEIDERMAN, COUNCILMEMBER 7 PHYLLIS CHENG, DFEH DIRECTOR AND EX OFFICIO MEMBER 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 3</p>	<p>1 introductions, let me again welcome you to this hearing. 2 The purpose of this hearing is to receive public comment 3 regarding issuance of the amendments to the California 4 Family Rights Act regulations proposed by the Fair 5 Employment and Housing Council. 6 This rule-making action clarifies mate 7 specific, and where appropriate conforms to relevant 8 federal regulations, existing state regulations 9 interpreting the California Family Rights Act set forth 10 in Government Code Section 1294512. 11 CFRA ensures work leave rights for the birth 12 of a child, for the purposes of bonding, for the 13 placement of a child in an employee's family or adoption 14 or foster care, and for the serious health condition of 15 an employee's child and their spouse and also for an 16 employee's own serious health condition. 17 The regulations will appear in the California 18 Code of Regulations, Title II, Sections 11087 through 19 11097. 20 Copies of the proposed amendments to the CFRA 21 regulations are available in the back of the room. For 22 those of you who will testify, a binder is available at 23 the front of the room that contains a copy of today's 24 hearing notice, the text of the proposed regulations, 25 and the Council's initial statement of reason.</p> <p style="text-align: right;">Page 5</p>

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1 The binder's available for your use while
2 testifying only. Please leave it on the podium or table
3 after you are done.
4 The text of the Council's proposed
5 regulations are also available on the Council's web page
6 at www.dfeh.ca.gov/fehCouncil.htm.
7 The Council is holding this hearing as part
8 of its formal rule-making process. We noticed this
9 public hearing more than 45 days ago in the California
10 Regulatory Notice Register published on February 21st,
11 2014, via e-mail sent to more than 7,000 individuals and
12 stakeholders, and via social media Facebook, LinkedIn,
13 and Twitter to more than 800 individuals and
14 stakeholders on the same date.
15 Pursuant to that notice, we are taking
16 testimony today on the proposed amendments to the CFRA
17 regulations and will take testimony again on June 2nd,
18 2014, starting at 10:00 a.m. at the California Public
19 Utilities Commission auditorium, which is located at
20 505 Van Ness Avenue in San Francisco, California.
21 We also will accept written comments on the
22 proposed regulations until 5:00 p.m. on June 2nd, 2014.
23 You may e-mail written comments to the Council at
24 fehCouncil.dfeh.ca.gov. If you prefer, you may instead
25 mail them to the Council care of Phyllis Cheng, at DFEH

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1 Headquarters at 2218 Kausen Drive, Suite 100, in
2 Elk Grove, California 95758.
3 If you brought a written copy of your
4 comments, please give it to Annmarie Billotti in the
5 front of the room. You will have -- if you have not
6 brought a written copy of your comments today, we would
7 appreciate it if you would provide us a written copy by
8 5:00 p.m. on June 2nd, 2014.
9 Anyone who testifies here today or submits
10 written comments will receive a copy of any changes or
11 amendments the Council makes to its proposed amendments
12 to the CFRA regulations.
13 Also, anyone who testifies or submits written
14 comments will have a 15-day period in which to make
15 written comments on any further changes to the proposed
16 amendments to the CFRA regulations.
17 The Council and DFEH staff will consider each
18 comment made here today and on June 2nd, as well as all
19 written comments received.
20 The Council will respond to each comment in
21 writing in its final statement of reasons, which will
22 become part of the Council's ruling-making record.
23 This hearing is being transcribed by a
24 certified court reporter. The transcript of the hearing
25 as well as all written comments received here today will

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1 also be part of the Council's official rule-making
2 record.
3 Because this hearing is being transcribed, it
4 is critical that anyone speaking do so clearly and that
5 only one person speak at a time.
6 If you have not already done so, please sign
7 in on the attendance sheet. If you sign in, we will
8 know that you were here today and will be able to send
9 you a copy of any changes to the proposed amendments to
10 the CFRA regulations.
11 Also, if you would like to testify, please be
12 sure you have indicated on the sign-in sheet that you
13 would like to testify so that we may call on you.
14 You will not be sworn in when you testify.
15 However, we ask that you come to the front of the room
16 so the court reporter can take down your testimony.
17 Please begin by spelling your name and
18 stating your affiliation. Also, if you are commenting
19 on a specific regulation, please identify the section of
20 the regulation so that we may refer to it while you
21 speak.
22 We will hear testimony until noon when we
23 will take a one-hour break. We will then hear from
24 Dean Chemerinsky at 1:00 p.m. and continue with our
25 rule-making until all public comment is complete. We

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1 will adjourn no later than 4:00 p.m. today.
2 Does anyone have any questions on the process
3 before we get going?
4 Hearing none, we will -- we are ready to
5 begin. And we're going to start with a brief recap from
6 myself and Councilmember Brodsky, the members of the
7 CFRA regulation subcommittee. We're going to keep this
8 brief because the purpose of today is really to receive
9 public comment.
10 For those of you that want a more detailed
11 version of the Council's deliberations on the CFRA to
12 date, I'd encourage you to review the Council's
13 September 16th and December 10th meeting, which are
14 available on the Council's page of the department's
15 website.
16 So just a recap briefly of how we got to
17 where we are today, Councilmember Brodsky and I in
18 looking at these regulations to craft appropriate
19 updates started with the administrative procedures, and
20 in particular with the pillars that are offered in the
21 Act that guide the rule-making process and any updates
22 to them.
23 And the six pillars or prongs are a
24 necessity, meaning that the need for regulation -- there
25 is a need for regulation to effectuate the purpose of

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1 the statute authority and eventually the statutory
2 authority to make changes to the regulations.
3 Clarity, the regulations obviously need to be
4 crafted so that they will be easily understood by those
5 affected by them. Consistency, meaning it should be in
6 harmony with existing statutes, court decisions, and
7 regulations.
8 And in considering this prong, we are mindful
9 of a couple things, the first being that the California
10 Family Rights Act statute itself was amended. The last
11 regulatory update was in 1995. So in the interim, there
12 was an amendment to the statute itself in 2011 which
13 clarified the prohibition against restraining or
14 interfering with the exercise of rights under the CFRA.
15 There have also been numerous rounds of
16 amendments to the regulations of the Act's federal
17 counterpart, the Family and Medical Leave Act. And
18 those regulations are cross-referenced throughout the
19 regulations and are also referenced in the statute
20 itself.
21 So we took a close look at these regulations
22 to see where incorporation of similar language would
23 help clarify our statute and generate consistency in the
24 manner in which similar provisions are interpreted.
25 In some instances, we are proposing similar

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1 updates and provisions, and in some instances, we
2 determined that our regulations did not require
3 incorporating similar language. And then finally, in
4 some instances, we elected to speak to the same subject
5 but did so through what we view to be more streamline
6 and clearer language.
7 The final prongs are reference, the statute
8 that the regulations will aid. In this case, obviously
9 that's the California Family Rights Act. And, finally,
10 the nonduplication prong, and that's the notion that
11 regulation shouldn't serve the purpose of duplicating
12 the statute or unnecessarily incorporate statutory
13 language.
14 As the Code itself acknowledges, there's
15 often tension between the prongs of clarity and
16 nonduplication. And where that occurred, we considered
17 it on a case-by-case basis, and in some instances
18 decided to keep or add statutory language because we
19 thought it would aid in clarity, and in other instances,
20 simply referenced the statute, which is obviously the
21 first place someone should look in -- in seeking to
22 understand the California Family Rights Act or any
23 statute.
24 Some of the more significant or noteworthy
25 changes in the updated regulations -- and, again, we'll

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1 walk through them pretty quickly -- starting in the
2 definitions section, which is 11087, we clarified at
3 (d)(3) who -- where there are multiple legal business
4 entities, who the employer would be for purposes of the
5 responsibility of the CFRA, and also clarified that
6 multiple entities could be subject to the CFRA if they
7 are joint employers or integrated employers.
8 We also clarified the definition of "eligible
9 employee" to include the clarifying definition that work
10 as defined for purposes of meeting the CFRA hours
11 requirements is the California Labor Code definition,
12 not the Federal Fair Labor Standards Act definition.
13 Also, in the statement of reasons, I think we
14 should clarify that even if a CFRA claim is being
15 litigated in federal court, state substantive law would
16 apply. And so it makes sense that a definition of
17 "work" should come from the California Labor Code and
18 not the Fair Labor Standards Act regardless of the
19 venue.
20 We've also clarified that if an employee has
21 an extensive break of service of seven or more years,
22 the past service does not have to be counted by the
23 employer in determining whether the employee has been
24 employed for at least 12 months. There is an exception
25 to that, and that's in the case of military service

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1 obligations that extend and explain part of the
2 seven-year or more absence.
3 We added a definition of "key employee,"
4 which is (l), that clarifies the statutory reference and
5 later substantive provisions of the regulations and in
6 particular the rules for the highest paid 10 percent of
7 an employer's employee, the special rules governing
8 their rights of return.
9 We added a clarification at (p) to the
10 statute's reference to "reason of the birth of a child"
11 and clarified that that included the expression that's
12 often used by practitioners "baby bonding" and is used
13 throughout the regulation.
14 And finally, in the definitions section,
15 anyway, we updated the definition of "spouse" to include
16 same-sex partners in marriage in light of the U.S.
17 Supreme Court's ruling in *Hollingsworth vs. Perry*, which
18 left intact the District Court's decision in *Perry*
19 vs. *Schwarzenegger*, which held that in California,
20 Proposition 8 violated California's equal protection
21 clause.
22 A couple other updates. Clarifications in
23 11089(a) and (b) to an employee's right to reinstatement
24 after using CFRA leave and to his or her rights upon
25 return to work including being able to return to the

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1 same position or one that is substantially equivalent.
2 There are a number of clarifications in (c)
3 to the narrow reinstatement requirement exceptions under
4 circumstances for leaves taken by key employees and a
5 clarification that an employee must be offered the
6 opportunity to return to work early if an employee
7 intends to invoke the key-employee exception.
8 There's a provision in (3) that if an
9 employee obtains CFRA fraudulently, they are not
10 entitled to the protections afforded by the California
11 Family Rights Act. However, to invoke this exception to
12 the underlying return-to-work requirement, it is an
13 employer's burden to prove that the CFRA was
14 fraudulently obtained.
15 We also addressed at 11090(e)(3) the scenario
16 of incremental use of CFRA leave in the context where --
17 a workplace where taking a part-day leave renders it
18 physically impossible to return to work and complete a
19 shift.
20 In this provision, we adopted essentially
21 something along the lines of the FMLA's clarification,
22 meaning that if it's physically impossible for an
23 employee to take -- to use CFRA leave incrementally and
24 return to work and be able to complete their shift, that
25 the entire shift will qualify as used CFRA leave.

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1 However, we added some explicit clarification
2 to that that is not in the FMLA, and that's that this is
3 only the case where it is truly physically impossible.
4 If there are -- for example -- the example that's
5 typically used is something like an airplane that you --
6 if the airplane has taken off, it renders it fairly
7 difficult to return from your CFRA intermittent leave
8 and complete your shift. So in that scenario, the
9 entire shift would be used CFRA leave.
10 However, if there are tasks, such as
11 administrative tasks, that an employee -- is part of the
12 employee's responsibilities and that they can complete
13 later that day, then that wouldn't trigger a physical
14 impossibility. It has to truly be physically
15 impossible.
16 We also made clear at Subsection (4) that
17 employers can make part-day deductions from the salaries
18 of exempt employees who use intermittent CFRA leave, but
19 only under the circumstances where such part-day
20 deductions are otherwise allowable under California
21 Labor Code and Industrial Welfare Commission Wage
22 Orders.
23 COUNCILMEMBER BRODSKY: And I'm going to pick
24 up from there. And we're now at 11091, if anyone is
25 following the regulations.

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1 We clarified that with respect to notice that
2 the employee has to give to the employer, that -- that
3 the -- that unless an employer waives his employee's
4 obligations, the employee must provide at least verbal
5 notice.
6 We also clarified that if there's any
7 ambiguity, the employer should inquire further of the
8 employer -- employee -- sorry -- if necessary to
9 determine whether the employee is requesting CFRA leave
10 and to obtain necessary information concerning the
11 leave, such as the commencement date, the expected
12 duration, and other pertinent information.
13 And we also -- on that aspect of an
14 employee's rights and obligations, that an employer may
15 not retroactively designate as CFRA leave a leave that
16 an employee's taken as CFRA leave after the employee's
17 returned without the employee's consent.
18 So together those provisions balance, we
19 believe, the employer's obligations to provide CFRA
20 leave, at the same time recognizing that an employee may
21 not want to designate every leave that is taken as CFRA
22 leave.
23 Moving on to 11092, which is the terms of the
24 CFRA leave, one of the important pieces that we
25 clarified is in (c)(2) having to do with the provision

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1 of health benefits. And what we clarified there is that
2 if an employee takes pregnancy disability leave, that
3 that does not -- well, I'm going to read the section
4 because I think it's worthwhile reading.
5 "As section 11044(c) of the Council's
6 pregnancy disability regulations state, 'The time that
7 an employer maintains and pays for group health coverage
8 during pregnancy disability leave shall not be used to
9 meet an employer's obligation to pay for 12 weeks of
10 group insurance coverage -- health coverage during leave
11 taken under CFRA. This shall be true even where an
12 employer designates pregnancy disability leave as family
13 and medical leave under FMLA. The entitlements to
14 employer-paid group health coverage through pregnancy
15 disability leave and during CFRA are two separate and
16 distinct entitlements."
17 So we reiterate that in the CFRA regs to make
18 it abundantly clear that there are two times -- two
19 kinds of leaves during which the employer is obligated
20 by FEHA to keep an employee on health benefits.
21 And the reference to FMLA, I should note that
22 under FMLA -- and this is -- happens in states that
23 don't have pregnancy laws as California does -- FMLA
24 leave can be used by a -- for pregnancy-related
25 conditions. Not so in California because we have a

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1 separate statute that governs pregnancy. So that's why
2 in California, the period of time during which an
3 employer may be obligated to keep the employee on group
4 health insurance may be seven months, 12 -- 12 weeks
5 plus four months. So we clarified that point.
6 We -- I'm just going to go to the highlights.
7 We made some changes that -- some of which, as Chaya
8 mentioned in the beginning, are very close to what FMLA
9 has, but we wanted to make sure that they were stated in
10 the context of our own laws.
11 But I do want to go to -- let's see. This
12 is -- let me go back to where it starts. 11092(e)(1).
13 We clarified that "CFRA leave shall not constitute a
14 break in service or cause the employee to lose
15 seniority, even if other paid or unpaid leave
16 constitutes a break in service for purposes of
17 establishing longevity or seniority, or for layoff,
18 recall, promotion, job assignment, or seniority-related
19 benefits."
20 So while an employee is on CFRA, when he or
21 she comes back to work from CFRA leave, they cannot be
22 in a worse situation than they would have been when they
23 started, even if the employer has reduced -- has changed
24 something to negatively impact seniority. That cannot
25 happen as a result of someone being on CFRA.

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1 Jumping to 11093 -- 11093(c), again, we
2 wanted to make sure that the regulations are clear about
3 the dovetailing of CFRA and pregnancy leave so that
4 someone may -- in number (1) we say, "No employer shall
5 be required to provide more CFRA leave than the amount
6 to which the employee is otherwise entitled, but this
7 does not excuse the employer's other obligations under
8 the FEHA, such as the obligation to provide reasonable
9 accommodation under the disability provisions where
10 applicable."
11 So, for example, someone might have taken
12 CFRA leave, might have used pregnancy leave, and still
13 may be disabled. And then the -- and then the
14 disability provisions of the Act would be triggered. So
15 nothing in CFRA undoes that.
16 In 11094, we added language to reflect the
17 amendment to the Act that included noninterference or
18 retaliation, which I believe was in 2011.
19 Is that when that --
20 And so the previous regulations didn't have
21 that. The language that we adopted -- or we proposed, I
22 should say -- because nothing has been adopted -- pretty
23 much mirrors FMLA.
24 And at 11095, we clarified that the posting
25 of notices may be done electronically so long as it --

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1 and this is the employers that the statute requires
2 posting -- so "long as it's posted in a --
3 electronically in a conspicuous place or places where
4 employees would tend to view it in the workplace."
5 So in order to fulfill that requirement
6 electronically, the employer would have to have
7 computers available to workers in the workplace. It's
8 not enough to say, "Oh, you can look at it in the
9 library" or, you know, "Just go home."
10 The other thing we clarified is for
11 non-English speaking workforce in terms of posting, that
12 an "employer whose workforce at any facility or
13 establishment contains 10 percent or more of persons who
14 speak a language other than English as their primary
15 language shall translate the notice into every language
16 that is spoken by at least 10 percent of the workforce."
17 And we then -- in terms of we wanted to
18 reflect -- we had to change the notice -- the text of
19 the notice that employers have been posting to reflect
20 that there is a slight difference between a pregnancy
21 disability leave and CFRA in terms of both acts or both
22 leaves contain a guarantee of reinstatement. So we
23 clarified in the notice that for pregnancy disability,
24 the guarantee of reinstatement is to the same position,
25 and for CFRA it is at the same or comparable position at

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1 the end of the leave. And that, of course, reflects the
2 differences in the statutory language.
3 So I think those are the highlights as we've
4 summarized them, and we would now --
5 Well, you want to -- you want to jump back
6 and --
7 CHAIRPERSON MANDELBAUM: Sure. Well, thank
8 you -- thank you, Councilmember Brodsky, having provided
9 that recap.
10 And, again, if people would like more details
11 on the deliberation that resulted in these draft
12 amendments, I encourage you, again, to look at the
13 footage available on the website from the September 16th
14 and December 10th meeting.
15 But having provided that recap of our
16 deliberations and the end result of those deliberations,
17 we're ready to begin public comment. So for those who
18 wish to provide public comment, now is a good time to do
19 so.
20 You can use the podium and microphone here.
21 And since we have a court reporter, please start by
22 spelling your name and providing your affiliation.
23 COUNCILMEMBER BRODSKY: And also, if you
24 could be sure to mention the sections that you're going
25 to be talking to, that will be very helpful for us in

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1 terms of following the discussion.
2 MR. SANSANOWICZ: Good morning.
3 CHAIRPERSON MANDELBAUM: Good morning.
4 MR. SANSANOWICZ: My name is Leonard
5 Sansanowicz. That's L-e-o-n-a-r-d, last name "S," as in
6 Sam, a-n, like Nancy, s-a-n again o-w-i-c, like Charles,
7 "Z," like zebra. I am an attorney with the Feldman Law
8 Firm, and I'm here on behalf of the California
9 Employment Lawyers Association, or CELA, which is the
10 largest plaintiffs' bar in employment law in the State
11 of California.
12 I just want to -- I want to thank the Council
13 for allowing me the time to speak. I will start by
14 saying that CELA does not have a full set of written
15 comments at this time but will prior to the
16 January 2nd -- the June 2nd meeting.
17 But I want to address one issue in
18 particular, and that is the concern of nonduplication
19 and why CELA has an interest in that generally.
20 Under the Administrative Procedures Act, of
21 course, Government Code Sections 11349, et seq., the --
22 any agency has six parameters that it has to abide by.
23 New regulations have to satisfy necessity, authority,
24 clarity, consistency, reference, and nonduplication.
25 The statute itself says that the purpose of

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1 not duplicating is just to not overlap or provide a
2 duplicate copy of the statute in the regulations. Our
3 concern as practitioners is that removing all language
4 of the statute from the regulations and merely providing
5 links to the statutes will create confusion and will in
6 fact obstruct the clarity prong that is required under
7 the APA.
8 Here's why: The -- the regulations are used
9 by many people, including laypeople. Human resources
10 personnel, they are looking to the regulations for
11 guidance. And the reason why CELA takes such an active
12 interest in these regulations is that these regulations
13 can help to ensure compliance. Because if a layperson
14 can understand what the law is, they will follow it.
15 It also can eliminate or reduce disputes, and
16 it can lower litigation in general because people will
17 have clarity. That will help to ease the burden on the
18 courts.
19 It will ensure that the law is applied
20 correctly, and when there are disputes, the regulations,
21 if they do provide clarity, can be very helpful in
22 resolving those disputes in two ways. One, in
23 mediation. We go to mediation, we can educate the
24 mediator and say, "These are the regulations. This is
25 how the law is intended to be applied."

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1 But the second way that the regulations can
2 be helpful from our perspective is to provide clarity
3 for the judges, for the court in two ways: One, also to
4 help educate the courts as to how the law is to be
5 applied; but secondly, at trial. And, again, with the
6 thought and concern of the layperson, these regulations
7 often are -- make their way into special jury
8 instructions, which are then used to help the jurors
9 determine the outcome of the case and resolve the
10 dispute. These special jury instructions have to be
11 vetted by judges. That means that they're already
12 approved by judges as being helpful to jurors.
13 So from CELA's perspective, it's very
14 important that the regulations be as clear as possible,
15 that they contain enough language from the statutes,
16 that the intent of the statute is clear in the
17 regulations as well because the regulations are used for
18 a variety of purposes.
19 Thank you.
20 CHAIRPERSON MANDELBAUM: Thank you.
21 Appreciate that. As I mentioned at the outset, this is
22 something we wrestled with. The two sort of competing
23 prongs are prongs that often have tension, obviously the
24 clarity and the nonduplication prongs, and I would be
25 curious to know, since we wrestled with this on kind of

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1 a case-by-case basis, whether you have it today or
2 perhaps CELA can provide it in the written comments as
3 to which specific either change/modifications in the
4 proposed regulations you think the statutory language
5 shouldn't have been removed or, affirmatively, where the
6 statute -- statute's text would be helpful even if it
7 wasn't there in the previous 1995 regulations.
8 I think this would be helpful to hear more
9 about specifically which ones you think are best served
10 by each erring on the side of clarity rather than
11 nonduplication. Because it is one we wrestled with on a
12 case-by-case basis.
13 MR. SANSANOWICZ: And, Councilmember
14 Mandelbaum, I appreciate the opportunity, and I agree
15 with you, and I will defer to the written comments and
16 not address that at this time.
17 I can guarantee you -- I can promise you that
18 the written comments will be comprehensive and will
19 address every single issue that I'm sure the Council has
20 tackled with great enthusiasm. So I, too, am looking
21 forward to the written comments.
22 CHAIRPERSON MANDELBAUM: Thank you.
23 COUNCILMEMBER BRODSKY: Thank you very much.
24 MR. SANSANOWICZ: All right. Thank you all.
25 COUNCILMEMBER PEREZ: Can I just say one

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1 thing? I have one -- since we're all making requests
2 now.

3 For CELA and frankly for anyone else who is
4 making public comments, I appreciate and agree with what
5 you're saying in terms of the purpose, and I agree with
6 Chairman Mandelbaum that it is sometimes a struggle
7 between those two competing -- subject competing
8 interests.

9 As a non-litigator in this group, one of the
10 things I would love to hear from anyone else is how you
11 think these regulations can be effective even before
12 there's an actual conflict. You started out by saying
13 whether it's an H.R. person or somebody internally. I
14 would love to hear that, if there's a way, and I'm very
15 pleased to hear the way in which it has previously been
16 used.

17 And I know we heard that before in the
18 litigation process. And I know mediation is better than
19 going to court. But in my mind, what's even better is
20 if we can resolve it at the actual work site. So that's
21 something I would be very interested in hearing, is how
22 these -- and I totally agree and that is certainly in my
23 mindset when we look at these regulations is how can we
24 write them clearly enough so they actually resolve an
25 issue in the workplace.

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1 MR. SANSANOWICZ: Thank you, Councilmember
2 Perez.

3 And I did not mean to discount your
4 chairmanship, Mr. Mandelbaum.

5 COUNCILMEMBER BRODSKY: That's okay. I
6 called him "Chaya."

7 CHAIRPERSON MANDELBAUM: They all work.

8 MR. SANSANOWICZ: Councilmember Perez, I
9 think that that's probably better addressed by attorneys
10 who represent management who could better articulate how
11 human resources personnel go about their decisions. I
12 can say from my own perspective -- oftentimes we
13 represent employees -- most of the time we represent
14 employees who have absolutely no familiarity with the
15 law. And so the law can seem convoluted. It can seem
16 oppressive. It can seem foreign. It can seem
17 unattainable for other people. And any attempt to make
18 that easier for people to understand, I think, would not
19 only help the human resources people, but also the
20 employees who feel like -- you know, a lot of times
21 clients will come to us and they'll say, "I know
22 something is wrong. This doesn't feel right, but I
23 don't know why."

24 Sometimes it has something to do with
25 something as a simple as a wage dispute. But sometimes

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1 it has to do with real legitimate interpersonal
2 interaction or a leave that has to be taken. And they
3 don't know the parameters, and they don't understand the
4 leave laws. And quite frankly, there's a lot of
5 attorneys and judges who don't know the leave laws
6 either.

7 So while I started by saying it would be
8 helpful to a layperson, I think it would be beneficial
9 for everyone.

10 COUNCILMEMBER PEREZ: Thank you.

11 CHAIRPERSON MANDELBAUM: Thank you for your
12 comments. Appreciate it.

13 MR. SANSANOWICZ: Okay. Thank you.

14 MS. KIM: Good morning, Chair Mandelbaum and
15 the rest of the councilmembers. My name is Cacia Kim.
16 That's C-a-c-i-l-i-a, Kim, K-i-m, and I am an attorney
17 with the California Women's Law Center. We are a
18 statewide civil rights organization that works on behalf
19 of women and girls.

20 We, in collaboration with other organizations
21 like the Legal Aid Society, Employment Law Center, will
22 be providing detailed written comments regarding the
23 proposed amendments to the CFRA regulations by the
24 June 2nd deadline.

25 However, I would like to take the opportunity

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1 that's provided today to make some general comments
2 about the six key issues regarding the proposed
3 amendments.

4 First, I would like to agree with my
5 colleague from CELA. We also would caution against
6 striking these helpful explanations in favor of the
7 reference to the statute or other regulations
8 specifically for the same reasons.

9 I know it would be helpful to have all the
10 information in one place. And I remember one specific
11 section was the covered employee which is such a pivotal
12 definition for the CFRA regulations.

13 The other huge issue that we have is that we
14 would strongly recommend against the Council's wholesale
15 adoption of the 2013 FMLA regulations which contain
16 restrictions and requirements never before contemplated
17 in the CFRA.

18 The CFRA, like so many other California state
19 laws, is broader than its Federal equivalent, the FMLA.
20 In certain areas like medical privacy, the CFRA in
21 tandem with California's strict privacy laws preclude
22 information that's required under the FMLA like
23 disclosure of diagnosis.

24 And if you look at the legislative history in
25 accordance with CFRA, the overarching theme of this

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1 legislation was to permit workers to take leave to care
2 for their family without fear of job loss, and except
3 for the limitations based on the number of employees of
4 familial relationships, that CFRA was intended to have
5 the broadest possible implementation.
6 So our written comments will specifically
7 identify the examples where the new CFRA regulations are
8 overly restrictive, burdensome, and will actually roll
9 back the leave rights that have been available to
10 California employees for decades.
11 Another area kind of in -- relating to the
12 striking of the helpful explanations is to add language,
13 for example, for difficult or confusing issues under the
14 CFRA. This would really help with the asserted goals of
15 these amendments, such as, you know, reducing
16 litigation.
17 Certain areas of leave are still very much
18 confusing for a lot of people, whether it's attorney or
19 laypeople. And this Council could significantly help by
20 adding clarity or explanation to each section.
21 For example, under Section 11092(b)(5)
22 regarding disability -- pregnancy disability and CFRA
23 bonding leave which involved two different entitlements
24 that allowed coverage of up to seven months of leave,
25 this is an area that's very, very confusing and very

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1 confusing for attorneys who are not employment attorneys
2 but handle a lot of other issues that are related to
3 employment matters. So we have done training on this,
4 and this is a very confusing area.
5 Other sections can greatly benefit from an
6 example such as Section 11087(b)(4) pertaining to how
7 you figure out if there are 50 employees within 75 miles
8 of a workplace, particularly given to the
9 mobile-to-mobile workforce and a lot of people who are
10 working from home but their main office is somewhere
11 else.
12 Other sections should be stricken, like
13 Section 11087(d)(3) regarding joint and integrated
14 employers or Section 11090(c)(4) pertaining to what
15 constitutes required overtime versus voluntary overtime.
16 These sections invite confusion and deny all
17 interference with leave rights.
18 The other area would -- I would caution
19 against, more burdensome restrictions for employees.
20 I'd like to put this in context. This is the time of
21 family medical crisis for employees. And requirements
22 like Section 11091(b) that adds notice of certification
23 restrictions as unnecessary burden costs are very
24 difficult to do in certain healthcare settings.
25 And I'll give you one example, the V.A.

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1 Hospital. For the past several months, the California
2 Women's Law Center along with many of our advocates have
3 been going across the state talking to women veterans
4 that have substantial mental and physical health
5 disabilities and are trying to get health care from the
6 V.A. They have a lot of problems. There's a lot of red
7 tape. Even just to schedule a visit is very difficult.
8 They also have to endure a parade of interns who come
9 for a short time, give them assistance, and are gone.
10 So there isn't somebody who knows what their
11 history is or what they're coming for at the next visit.
12 And I think a lot of the veterans what they have said is
13 it's almost impossible to try to keep a job and go to
14 these allotted -- their essential medical health care
15 appointments.
16 And so for some of the veterans, they just
17 quit because they're having a hard time working with
18 their employers and trying to work with the V.A.
19 Hospital in trying to get the services that they need.
20 We also object to Section 11090(e)(3), the
21 designation of time as CFRA leave where working a
22 reduced shift is physically impossible. The employer
23 should not be allowed to force an employee out of more
24 leave than he requires. There are other things that you
25 should do like transfer -- you could transfer the

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1 employee to another position. But it's really difficult
2 if you're going to force them out, especially if they
3 can't afford to do that.
4 We also object to Section 11089(d)(3)
5 regarding fraudulently obtaining CFRA leave. This is
6 unnecessary. There's already protections against fraud
7 under the CFRA.
8 For example, Section 11091(b)(2) permits an
9 employer to obtain second opinions in the event that it
10 doubts the certificate's validity as to the employee's
11 own serious health condition. This invites interference
12 with leave or a chilling effect to employees who don't
13 understand their leave rights and are afraid of making a
14 mistake.
15 On the other hand, we really recommend
16 increasing protections to make sure that all employees
17 understand their leave rights by deleting language
18 suggesting that electronic posting of the notice is
19 sufficient and providing information about leave rights
20 in the employee's own language.
21 We would also like to clarify -- to beef up
22 the clarification of the difference between CFRA leave
23 and leave provided as a reasonable accommodation under
24 the Fair Employment and Housing Act. And this is a
25 really important concept that should be emphasized and

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1 clarified.
2 We recommend additional language to this
3 effect and explicitly stating that such accommodated can
4 include extension -- extension of the leave beyond the
5 12 weeks of CFRA-qualifying leave.
6 We would also recommend other actions to
7 emphasize and educate regarding this concept, for
8 example, putting it in notice to employees.
9 And finally, Sections 11094(a) and (b) that
10 regard the retaliation and prohibited discrimination
11 because of CFRA leave. We need to create a language
12 that includes important contents that are not
13 competitive, and we suggest to provide additional
14 language to clarify that employees are protected from
15 retaliation even if they're not yet eligible for CFRA
16 leave.
17 In closing, even in 2014 CFRA and the FMLA
18 are one of the few substantive protections that
19 employees have to manage their work-life balance. We
20 lead the world on many social issues but not on family
21 care leave. The United States remains the only
22 industrialized nation that does not offer paid maternity
23 leave.
24 We're also the only advanced economy that
25 does not guarantee the right to earn sick days. And,

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1 therefore, I say the focus of these amendments should be
2 to do more, not less.
3 Thank you for providing me this opportunity
4 to be heard.
5 COUNCILMEMBER BRODSKY: Thank you. I have a
6 question. In 11096 -- and this is a section that's --
7 the heading is "Relationship with FMLA Regulations," we
8 do make it clear that -- that if FMLA is consistent with
9 CFRA --
10 MS. KIM: Right.
11 COUNCILMEMBER BRODSKY: -- that you don't go
12 and look at FMLA. Do you think that needs to be beefed
13 up?
14 MS. KIM: Yeah. We do think that that needs
15 to be beefed up. But all the other sections we would
16 want to say not to take the FMLA as direction. The
17 California Family Rights Act that came first were
18 broader, and we should be leading the way.
19 COUNCILMEMBER BRODSKY: In your written
20 comments, will you --
21 MS. KIM: We will have specific --
22 COUNCILMEMBER BRODSKY: Okay.
23 MS. KIM: Yes, specific sections where we
24 think that FMLA should not be adopted and why we have a
25 problem with that.

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1 COUNCILMEMBER BRODSKY: Thank you.
2 CHAIRPERSON MANDELBAUM: Thank you, Ms. Kim,
3 for your helpful comments. I have a couple questions.
4 MS. KIM: Sure.
5 CHAIRPERSON MANDELBAUM: With respect to
6 electronic posting, one of the goals obviously is to
7 increase awareness of rights wherever the employee
8 looks. And so I would be curious perhaps in your
9 written comments if you could address instances where
10 the workforce genuinely sees electronic posting at a
11 rate that exceeds, you know, work -- physical workplace
12 posting.
13 So certainly for -- in examples where
14 there's -- it's not a computer-based workplace, I think
15 it would be impossible to meet the requirements of it
16 being in a conspicuous place where the employees need
17 it. But there are a lot of work forces, including my
18 own, where I see things that are posted electronically
19 much more frequently than something that might be on a
20 Post-It in the back of the kitchen.
21 So if there's language that you could propose
22 that you think would clarify the circumstances in which
23 electronic posting is available. I think it is helpful
24 to maintain electronic posting in the right
25 circumstances simply because it provides a better

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1 version of notice in certain workplaces.
2 COUNCILMEMBER BRODSKY: Or at least
3 another --
4 MS. KIM: Right.
5 COUNCILMEMBER BRODSKY: -- version -- another
6 way.
7 CHAIRPERSON MANDELBAUM: And then one other
8 thing I wanted to address -- and perhaps I'm unclear --
9 in the regulations related to interfering or restraining
10 CFRA rights, you mentioned that they apply even to
11 employees who aren't CFRA eligible. And we do have in
12 Subsection (d) the clarification -- and this actually
13 comes from FMLA -- that employees -- or individuals and
14 not merely employees are protected from retaliation. So
15 it's actually broader even than just employees who are
16 not CFRA eligible.
17 So I would be curious in your comment if you
18 could elaborate about what aspects you think is left
19 unclear with respect to employees that are not CFRA
20 eligible being protected.
21 MS. KIM: Yeah. I think just clarifying
22 language would be very helpful there, given the case law
23 where some of the employees who are not CFRA, you know,
24 eligible are taking it and then are not provided the
25 protection. So I think if we just had clarifying

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1 language. And we will provide it on the June 2nd
2 comment. It would be more helpful to everybody in
3 addition to.

4 COUNCILMEMBER PEREZ: And one area I have a
5 question on -- and if you could clarify, that would be
6 great -- is I hear you, and I understand the concerns
7 about being -- an employee perhaps feeling like they're
8 being forced to take leave that they neither want nor
9 need if they can't physically do it intermittently.

10 My concern, though, with the suggestion --
11 and I definitely would like to hear more -- is the
12 alternative that you propose is the transfer to another
13 job. And I'm a little bit unclear as to how that
14 would -- how that would work. Would they just be
15 transferred temporarily until they no longer need
16 intermittent leave? Is it a permanent transfer?

17 I'm not asking you to answer right now, but
18 it provides me with a little bit of concern because the
19 employer -- and I certainly don't want to give an
20 opportunity for an employer to force a transfer when
21 perhaps that's not the desired goal either. And so more
22 on that would probably be helpful.

23 MS. KIM: Yes. So we will definitely provide
24 that in our comments. We are working with multiple
25 organizations and individuals as well to provide more

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1 kind of practical how we can implement these.

2 COUNCILMEMBER BRODSKY: The section where
3 that -- specifically we tried to deal with that is in
4 11090(e)(3).

5 So, yeah, if you -- in your comments, you can
6 kind of take a look at that one, that would be helpful.

7 MS. KIM: Thank you.

8 CHAIRPERSON MANDELBAUM: Thank you, Ms. Kim.

9 COUNCILMEMBER BRODSKY: Thank you.

10 COUNCILMEMBER PEREZ: Thank you.

11 CHAIRPERSON MANDELBAUM: Are there any other
12 public comments? We will have an opportunity later this
13 afternoon, but it may be short. So if you do have
14 comments, now is a good time.

15 MR. WHITE: Hello. My name is Steve White,
16 S-t-e-v-e W-h-i-t-e. I'm the former district
17 administrator for the DFEH in the Santa Ana office,
18 Los Angeles office, Ventura office, as well as former
19 FMLA/CFRA manager for Los Angeles Unified School
20 District.

21 I currently have my own consulting -- small
22 consulting business called "EEO Has Solutions." And I,
23 too, do not have written commentary today, but I
24 certainly will have that before -- before June 2nd.

25 And I have a number of concerns. Let me just

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1 identify seven of them today in terms of the topic, at
2 least, and if you have questions, I'll certainly be
3 happy to answer them.

4 In Section 11087(e)(3), the reference point
5 for purposes of determining whether CFRA eligible after
6 PDL has been changed from FMLA to PDL. And my concern
7 is there can be some situations where the woman when
8 first taking a PDL, such as morning sickness or a short
9 PDL early on in her pregnancy, may not be FMLA eligible
10 or even CFRA eligible.

11 And if you obtain the FMLA demarcation, then
12 it's -- by definition, they'll be automatically CFRA
13 eligible immediately after her PDL. So that's one. And
14 I'll certainly explain that or elaborate that in my
15 written comments.

16 The -- in 110 -- or 11088(c), the limitation
17 for two parents working for the same employer has been
18 changed to two spouses working for the same employer.
19 I'm concerned that that conflicts with the marital
20 status prohibition of discrimination. The FMLA already
21 conflicts with the marital status portion of the Fair
22 Employment and Housing Act.

23 I mean, as most advisors to employers
24 recommend, that employers don't even follow that at all
25 because it's just a minefield. And it would certainly

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1 seem to me that the Council should consider giving that
2 similar kind of advice.

3 The section does not require of employers to
4 do. They don't have to follow that. It's just an
5 option for them. But it does conflict with the marital
6 status discrimination section.

7 In 11091, Subsection (1), the whole process
8 of designation is spelled out. And I have some concerns
9 over that in terms of the -- especially for many
10 employers who do not designate -- do not designate at
11 all. There is another section -- and I think 11094 --
12 that talks about failure to authorize a CFRA leave is --
13 can be considered interference and that is proper.

14 But it should also be identified for
15 employers in that section on designation at 11091 what
16 happens or what they should do if they forget to or just
17 don't designate at all. Obviously, it would seem to me
18 that providing that protection without the deduction of
19 CFRA is the logical step to take.

20 In 11092(b)(4), the employer and the employee
21 are able to negotiate nonuse of CFRA even though -- even
22 when it's clearly a CFRA-eligible, CFRA-qualifying
23 event. I have no -- I'm not particularly in favor of
24 that, but the fact is it seems to me that negotiations
25 sounds like it's an equal playing field where the

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1 reality should be that the employer -- if they're unable
2 to negotiate agreement on that, the employer is
3 obligated to designate that as CFRA leave, assuming
4 that, of course, it's a CFRA-qualifying and
5 CFRA-eligible employee.
6 In 11092(c)(2), I'm sure that there can be
7 some disagreement, but I had some grave concerns when
8 the commission made the change in their PDL regulations
9 to change CFRA regulations with respect to health
10 benefits.
11 If the section in the Government Code
12 1294542, I believe, (f)(1) is read in its entirety, I
13 agree that CFRA and PDL are separate entitlements, but
14 throughout all of CFRA, FMLA, ADA, FEHA, and PDL there
15 can't be concurrent running of these leaves, and it
16 strikes me that if one reads that section of the law,
17 that the health benefits cannot be -- I'm not against
18 health benefits being extended and certainly agree that
19 employers can extend health benefits to CFRA, but it
20 just seems to me that in (f)(1) it says that the health
21 benefits shall start on the first day that FMLA starts.
22 And that's not what the regulations currently say, and
23 that's not, of course, what your prior predecessors on
24 the commission did. And I have grave concerns about the
25 legality of that. I'm not against that in terms of the

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1 right thing to do, but I don't believe that's in
2 conformance with what the law says.
3 In 11097, the certification form, as we all
4 know, there have been many, many charts, many, many
5 comparisons prepared by many people identifying what the
6 difference is in terms of what the employer can ask on
7 the certification form, such as in -- well, in the -- in
8 the law. It does say that you can ask commencement date
9 of the serious health condition, but it doesn't permit a
10 commencement date on the incapacity caused by the
11 serious health condition.
12 Those are two different things. Sometimes
13 they might be identical, but especially with respect to
14 chronic conditions, those are two different things, so
15 one certainly should be able to expect from the Council
16 as to whether or not that can be asked.
17 There are numerous other questions that can
18 be asked, such as frequency. If one takes a literal
19 reading of the law, you can't ask about frequency. You
20 can only ask about duration. But in the certification
21 form, there are questions with respect to family care
22 about -- that kind of indirectly ask about the frequency
23 of an absence, especially when it's an intermittent
24 absence. But there are no such questions of frequency
25 in the certification form for an employee's own health

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1 condition.
2 In your pregnancy -- in the Council's
3 pregnancy certification form, there are questions --
4 there are several questions about frequency, even though
5 that's not particularly -- that's not particularly
6 authorized in the exact regulations.
7 There are a number of other questions that
8 are not clear. And one question, of course, that is
9 clear, that you cannot ask diagnosis, and that is clear
10 in the law, it's clear in the regulations, and certainly
11 is something I agree with.
12 But many other questions regarding the
13 certification form that could be reasonable to ask for
14 an employer, and I'm certainly sure that they do ask
15 because they follow most of what -- the FMLA
16 certification form deleting the diagnosis.
17 But I will be providing a whole list of
18 questions that the Council should identify is this
19 permissible or is this not permissible that employers
20 typically are asking.
21 And my last point -- although I do have other
22 points that I'll be making in my written comments -- is
23 under 11097, the concept of serious health condition.
24 In your definitions, it identifies that we accept and
25 adopt -- I'm not sure that that's exactly the

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1 language -- the FMLA definition of "serious health
2 condition." But when you use the -- when you see the
3 examples in the certification form, they are not -- they
4 are not the same.
5 For instance, under "Absence Plus Treatment,"
6 as -- we know that the FMLA has added that the first
7 treatment must occur within seven days and the second
8 treatment must occur within 30 days. I'm not so sure
9 that I think that's a good idea. As a matter of fact, I
10 don't think that's a good idea. But nevertheless,
11 there's a conflict between your definitions adopting
12 FMLA definition and the certification form which gives
13 the examples.
14 The other example -- and it may be wise to do
15 that -- is crossed out "overnight stay," but that still
16 is a requirement for the FMLA serious health condition
17 definition.
18 So with that in mind, those are my general
19 comments. And I have additional comments in my written
20 submission before June 2nd.
21 CHAIRPERSON MANDELBAUM: Thank you,
22 Mr. White. We appreciate that.
23 Any comments or questions?
24 Thank you.
25 COUNCILMEMBER BRODSKY: Thank you.

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1 MR. WHITE: Thank you very much.
2 MR. CHAMI: Good afternoon. My name is
3 Pouya Chami. I'm an attorney with Chami Law and also
4 here on behalf of the California Employment Lawyer's
5 Association as well with Mr. Leonard Sansanowicz, who
6 spoke a little earlier.
7 CHAIRPERSON MANDELBAUM: Thank you,
8 Mr. Chami. Can you spell your name for the record for
9 the court reporter here.
10 MR. CHAMI: Sure. First name is P-o-u-y-a.
11 Last name is C-h-a-m-i.
12 And I just have a few brief comments. One of
13 the emphasis points that CELA wanted to make was when
14 incorporating the FMLA regulations into these new
15 amendments, we just ask that they not be just taken
16 verbatim from the FMLA. There are certain instances
17 where FMLA may be a little bit more restrictive;
18 whereas, CFRA and intentions of FEHA were that there be
19 greater protection provided to the employees.
20 One example -- one brief example from the
21 definitions, for instance, "uncovered employee" means
22 any person or individual including successors in
23 interest engaged in any business or enterprise in
24 California. That successors in interest language was
25 incorporated from the FMLA, and it's important to have

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1 that in there to show that, you know, an employer who
2 simply, you know, transfers the name of the company to a
3 new entity but everything else stays the same, that
4 those employees are now not denied coverage under CFRA
5 because their clock starts over.
6 And FMLA does not define "successors in
7 interest." It's left to the case law to define
8 "successors in interest." In these amendments, we also
9 don't define "successors in interest." And I think this
10 is a good example of making an effort to add additional
11 language where FMLA may be silent. And where we just
12 incorporate the text verbatim, we may be leaving out
13 certain language that might provide greater coverage or
14 greater clarity as to what CFRA does that FMLA does not.
15 That's it. Thank you.
16 CHAIRPERSON MANDELBAUM: Thank you,
17 Mr. Chami.
18 COUNCILMEMBER BRODSKY: Thank you.
19 CHAIRPERSON MANDELBAUM: Any other CFRA
20 public comment this morning? Once again, there will be
21 an opportunity later this afternoon after
22 Dean Chemerinsky and before we proceed with the
23 remainder of our non-CFRA hearing portion of our
24 meeting.
25 Seeing none, we will adjourn for our lunch

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1 break. We'll probably get back a little bit before 1:00
2 since we're starting it a bit early.
3 At 1:00 p.m. precisely, we will have a
4 comment from the Dean of U.C. Irvine Law School,
5 Erwin Chemerinsky, and then we will proceed with the
6 CFRA notice and comment portion of the meeting for any
7 additional comments for people who attend this afternoon
8 or wish to provide comment and are here today but want
9 to speak this afternoon for some reason.
10 After we conclude the CFRA portion of our
11 hearing, we'll continue our meeting, which obviously has
12 a number of substantive items on the afternoon's agenda,
13 including a reintroduced FEHA employment provision
14 regulation and also an update from the Housing Council.
15 So with that, we'll adjourn and continue
16 shortly before 1:00 p.m. Thank you.
17 (At the hour of 11:25 a.m. the luncheon
18 recess was taken, the proceedings to be
19 resumed at 1:00 p.m.)
20 (At the hour of 1:19 p.m. the following
21 proceedings were had at the same place
22 with the same persons present:)
23 CHAIRPERSON MANDELBAUM: So we will now
24 resume the California Family Rights Act regulations
25 notice and comment hearing portion of the meeting. We

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1 are back on the record, and the time is 1:19.
2 We enjoyed the public comments -- very
3 detailed and constructive public comments that we
4 received this morning, and now is another opportunity if
5 anyone has any additional public comment related to the
6 updated California Family Rights Act regulations that
7 are being proposed. Now is the time to share your
8 thoughts.
9 Seeing no additional public comment, we will
10 continue with the remaining portions of our meeting.
11 And, again, as a reminder, an additional opportunity to
12 testify at a meeting is available on June 2nd in
13 San Francisco. And we also look forward to receiving
14 written comments both from those that spoke earlier
15 today and from additional stakeholders and members of
16 the public as well.
17 (Pause in proceedings.)
18 CHAIRPERSON MANDELBAUM: So we are back on
19 the record in the CFRA regulations update notice and
20 comment hearing. And we do have one additional comment.
21 The time is approximately 1:28 p.m. And we'll take
22 additional public comment on the CFRA hearing.
23 So please start by introducing yourself,
24 spelling your name for the court reporter and providing
25 any affiliations.

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<p>1 MS. PEREZ: Okay. My name is Armida Perez, 2 spelled A-r-m-i-d-a P-e-r-e-z. And I am an H.R. 3 administrator at Orange County Headstart, and my 4 responsibilities -- part of it is to administer all 5 leaves of absences. So I have had several concerns, and 6 I've tried to get ahold of the DFEH through different 7 means to get answers to my questions, and I haven't been 8 able to.</p> <p>9 So one of the concerns that we have is we are 10 a preschool, so the majority of our teachers don't work 11 12 months a year. They work either nine-and-a-half to 12 ten months a year. And I just wanted to know is there a 13 different criteria for them as far as working the 14 12 months, or do they still have to work the 12 months 15 to be eligible for CFRA even if they're not expected to 16 work the 12 months during the year but rather 17 nine-and-a-half months or ten months?</p> <p>18 That's one of my questions. And it's not 19 addressed here. And I have read that for teachers, they 20 are -- there's a different calculation for how they 21 would meet the requirement, but I haven't found that 22 yet. So if that could be provided, I would greatly 23 appreciate it.</p> <p>24 Another -- another thing that I need 25 clarification on is we have a regulation that says that</p> <p style="text-align: right;">Page 50</p>	<p>1 But that's not the case under the CFRA. I 2 don't know if some clearer wording can be added to the 3 CFRA to say that the employer doesn't have to consent to 4 it. They don't have to agree with the request of 5 intermittent leave but, rather, that the employee 6 qualifies for it and so that they are entitled to take 7 it. If that is the case as I understand it. Because it 8 is different when I read the FMLA, that the employer 9 does have to agree with the employee's request for 10 intermittent leave. That's not the case under the CFRA.</p> <p>11 So those are just some of the concerns I have 12 and hope to see them addressed or clearer in the next 13 set of regulations or the updates.</p> <p>14 Thank you.</p> <p>15 COUNCILMEMBER BRODSKY: That's very helpful. 16 Thank you.</p> <p>17 CHAIRPERSON MANDELBAUM: Also, just on the 18 subject of teachers, I know that was part of the 19 legislative updating.</p> <p>20 And, Ms. Billotti, can you remind us what the 21 pending legislation, the number is? Because it might be 22 interesting to our last speaker and to others.</p> <p>23 MS. BILLOTTI: Yes. The pending legislation 24 would reduce the eligibility requirements for teachers. 25 So instead of their having to work 1,250 hours in a</p> <p style="text-align: right;">Page 52</p>
<p>1 once the employee meets the eligibility period for -- to 2 take leave and later during that year they need to take 3 leave for the same reason, they don't have to meet the 4 requirement of the hours.</p> <p>5 But what is "the same reason"? I have a 6 situation where an employee was out on leave for her 7 right knee, and now she needs to be out on leave for her 8 left knee, but she hasn't worked the 1,250 hours. Is 9 that considered the same reason? Or, you know, maybe 10 giving us a little more information as far as what "the 11 same reason" is. Is it the same medical reason or -- 12 and in this case, it is the same medical reason, but not 13 exactly the same body part.</p> <p>14 So with that, we're -- you know, we always 15 are -- err more on the side of caution. So we're giving 16 the employee the right to go on so far a leave. But we 17 just want to make sure that we are doing the right 18 thing. So we don't have clarification on that.</p> <p>19 And the other concern is under FMLA, the 20 employer can say, "No, we cannot allow you to take your 21 intermittent leave for baby bonding." But under CFRA, 22 the employer doesn't have to agree to intermittent 23 leave. So if the employee says, "I want to take two 24 weeks here and another two weeks there," the employer 25 has to give it to them if they qualify for it.</p> <p style="text-align: right;">Page 51</p>	<p>1 preceding 12-month period, the proposed -- legislative 2 proposal is that they would be covered if they worked 3 60 percent of what's considered a full-time position 4 during the school year.</p> <p>5 CHAIRPERSON MANDELBAUM: And what was the -- 6 what's the pending -- what's the identify -- the number 7 of the pending legislation or what --</p> <p>8 MS. BILLOTTI: 1562. AB1562.</p> <p>9 CHAIRPERSON MANDELBAUM: So that some of 10 those issues are being addressed right now at the 11 legislature.</p> <p>12 But thank you very much for your comments, 13 Ms. Perez.</p> <p>14 Any other additional public comment on the 15 CFRA regulations?</p> <p>16 MS. CHENG: I just want to add that, 17 Ms. Perez, if you have any questions right now about the 18 workplace, you can always e-mail either -- now one of 19 us. You can just e-mail me, phyllis.cheng -- 20 C-h-e-n-g -- @dfeh.ca.gov. And we can answer your 21 immediate questions. And then Council can address your 22 questions long term on the regulations.</p> <p>23 MS. PEREZ: Okay.</p> <p>24 MS. CHENG: Thank you.</p> <p>25 MS. PEREZ: Appreciate it.</p> <p style="text-align: right;">Page 53</p>

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<p>1 CHAIRPERSON MANDELBAUM: Great. Well, seeing 2 no additional public comment, again I want to thank 3 everyone for taking the time to provide public comment 4 regarding the issuance of the proposed amendments to the 5 CFRA regulations. Our next hearing will be held on 6 June 2nd, 2014, starting at 10:00 a.m., at the 7 California Public Utilities Commission auditorium, 8 505 Van Ness Avenue in San Francisco.</p> <p>9 We also will accept written comments on the 10 proposed amendments to the CFRA regulations until 11 5:00 p.m. on June 2nd, 2014. Anyone who testifies here 12 today or submits written comments will receive a copy of 13 any changes or amendments the Council makes to its 14 proposed amendments to the CFRA regulations.</p> <p>15 Also, anyone who testifies or submits written 16 comments will have a 15-day period in which to make 17 written comment on any of the changes to the proposed 18 amendments to the CFRA regulations.</p> <p>19 The Council will consider each comment made 20 here today and also on June 2nd, as well as all written 21 comments that are received. The Council will respond to 22 each comment in writing in its final statement of 23 reasons, which will become part of the Council's 24 rule-making record.</p> <p>25 Again, thank you for your testimony. And the</p> <p style="text-align: right;">Page 54</p>	<p>1 REPORTER'S CERTIFICATE</p> <p>2</p> <p>3 I, LELIA C. HASUIKE, CSR No. 11082, Certified 4 Shorthand Reporter, certify;</p> <p>5 That the foregoing transcript of proceedings 6 were taken by me at the time and place set forth herein;</p> <p>7 That the testimony of the witnesses, the 8 questions propounded, and all objections and statements 9 made at the time of the proceedings were recorded 10 stenographically by me and were thereafter transcribed;</p> <p>11 That the foregoing is a true and correct 12 transcript of my shorthand notes so taken.</p> <p>13 I further certify that I am not a relative or 14 employee of any attorney of the parties, nor financially 15 interested in the action.</p> <p>16 I declare under penalty of perjury under the 17 laws of California that the foregoing is true and 18 correct.</p> <p>19 Dated this 16th day of April, 2014.</p> <p>20</p> <p>21 _____</p> <p style="text-align: center;">LELIA C. HASUIKE, C.S.R. NO. 11082</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 hearing part of this meeting is adjourned.</p> <p>2</p> <p>3 (Ending time: 1:34 p.m.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 55</p>	
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